June, 1994

HONOR ROLL

414th Session, Spokane Basic Law Enforcement Academy - February 1 through April 22, 1994

Best Overall:	*Deputy Sandra Palomarez - Franklin County Sheriff's Department*
Best Academic:	*Officer Ellis Hawks, II - Spokane Police Department*
Best Firearms:	*Officer Jeffrey Paynter - Spokane Police Department*
Best Mock Scenes:	*Deputy Charles Humphreys - Walla Walla County Sheriff's Department*

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415th Session, Basic Law Enforcement Academy - February 8 through April 29, 1994

Best Overall:	*Officer Matthew G. Ness - Seattle Police Department*
Best Academic:	*Officer Matthew G. Ness - Seattle Police Department*
Best Firearms:	*Officer Stacy Denham - Chehalis Police Department*
	Officer William R. Earick - Puyallup Police Department
President:	*Officer John M. Fecteau - Tacoma Police Department*

****

Corrections Officer Academy - Class 195 - April 4 through 29, 1994

Highest Overall:	*Officer Bradley E. Vaughn - Twin Rivers Corrections Center*
Highest Academic:	*Officer Ronald A. Rockness - Whitman County Jail*
Highest Practical Test:	*Officer Christopher J. Baldwin - Skagit County Jail*
	Officer Debbra A. Cooke - Washington State Penitentiary
	Officer Oscar J. Cullum - Twin Rivers Corrections Center
	Officer Steven W. Hopkins - Grays Harbor County Jail
	Officer Lisa J. Mills - Tukwila City Jail
	Officer Robert G. Suttelle, Jr. - Skamania County Jail
	Officer Terri L. Texeira - Renton City Jail
Highest in Mock Scenes:	*Officer Jeffrey H. Jackson - Marysville City Jail*
	Officer Timothy D. Kiele - Twin Rivers Corrections Center
	Officer Lisa J. Mills - Tukwila City Jail
	Officer Bradley E. Vaughn - Twin Rivers Corrections Center
Highest Defensive Tactics:	*Officer Christopher J. Baldwin - Skagit County Jail*

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WASHINGTON STATE SUPREME COURT

DETECTIVE'S ACT OF LISTENING IN AT TIPPED PHONE RECEIVER NOT UNLAWFUL

State v. Corliss, 123 Wn.2d 656 (1994)

Facts:

During the course of a drug investigation, officers from the South Snohomish Narcotics Task Force monitored several telephone conversations between an informant and Corliss, a suspected marijuana dealer, by having the informant tip the telephone receiver in the detectives' direction. During the last monitored phone conversation with a tipped phone, a drug deal was arranged. Corliss showed up with the money, and he was arrested. He was charged under the Uniform Controlled Substances Act.

Proceedings:

Corliss moved to suppress evidence relating to the phone conversations, based on a claim of violation of the Privacy Act, chapter 9.73 RCW. His motion was denied, and he was convicted of attempted possession of a controlled substance with intent to manufacture or deliver.

ISSUES AND RULINGS: (1) Does it violate the privacy act, RCW 9.73.030 for a police officer to listen in on a phone conversation via a "tipped" receiver? (ANSWER: No); (2) Does it violate the state constitution, article 1, section 7, for a police officer to listen in on a phone conversation via a "tipped" receiver? (ANSWER: No) Result: Snohomish County Superior Court conviction for attempted possession of a controlled substance with intent to manufacture or deliver affirmed.

ANALYSIS: (Excerpted from majority opinion)

(1) PRIVACY ACT

> We first address whether the state privacy act, RCW 9.73, has been violated. . . .
>
> The privacy act (Act) generally prohibits interception, transmission or recording of any "private communication" or "private conversation" without the consent of all parties involved in the communication. There are a number of statutory exceptions to the Act which are not applicable in this case. The Act also provides for procedures under which, in some circumstances, law enforcement may intercept or record conversations concerning controlled substances even without the

consent of all parties to a conversation. But the State concedes that such provisions do not apply in this case.

RCW 9.73.030(1)(a) provides in relevant part:

> Except as otherwise provided in this chapter, *it shall be unlawful for . . . the state* of Washington, its agencies, and political subdivisions *to intercept*, or record, any:
> (a) Private communication transmitted by telephone . . . between two or more individuals . . . *by any device electronic or otherwise designed to record and/or transmit said communication* regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

[Court's italics.]

We conclude that the informant's act of tilting the telephone receiver so the officer could hear the conversation is not conduct prohibited by the Act. We agree with the trial court and the Court of Appeals that there was no violation of the statute because the conversation was not "intercepted" by a "device" designed to record or transmit. **Here the officers did not "intercept" an otherwise private communication by means of any kind of device.** They simply listened, in person, to what they could hear emanating from the telephone. Because there was no *device* used to record or transmit the conversation, we conclude that by the plain language of the statute, it is not applicable under the facts in this case. **Our holding goes no further. [Italics by Court; Bold emphasis by LED Editor -- see comment below]**

(2) STATE CONSTITUTION

Petitioner argues that . . . his constitutional right to privacy under the Washington State Constitution was violated when the informant consented to allow the officers to hear his telephone conversations with Petitioner. In his brief to the Court of Appeals, Petitioner . . . argued that prior Washington law indicates that greater protection should be afforded under our state constitution, article 1, section 7, than is available under the fourth amendment to the United States Constitution. After Petitioner's brief was filed in the Court of Appeals, we decided State v. Salinas, 119 Wn.2d 192 (1992) **[Aug. '92 LED: 05]**. That case is directly in point.

In Salinas, Justice Dolliver, writing for an 8-justice majority, explained as follows:

> The issue as to whether there is a right of privacy under our constitution where one party, as here, consents to the contents of the conversation being recorded was settled in three cases decided in the 1960's: See State v. Jennen, 58 Wn.2d 171 (1961); see also State v. Wright, 74 Wn.2d 355 (1968). . ., State v. Goddard, 74 Wn.2d 848 (1968). This court held there was no expectation of privacy and Const. art. 1, § 7 did not prevent the disclosure of the conversation. These cases have neither been overruled explicitly or implicitly nor have the cases decided by this court subsequent to Wright, Goddard, and Jennen, none of which concerned the privacy of

electronic communications, impaired the validity of the earlier cases.

> We adhere to the view expressed in Salinas which was decided just last year, and conclude that Petitioner Allan B. Corliss' state constitutional privacy rights were not violated when the informant consented to allow the police officers to overhear his conversations with Petitioner.

[Footnotes, citations omitted]

LED EDITOR'S COMMENT: In our very short note about Corliss in the May LED's "Next Month" entry at 21, we indicated that the majority's ruling would also allow officers to listen in at an extension phone. However, upon a closer reading of Corliss, we must revise our comment. While the Court of Appeals opinion in Corliss did declare that State v. Bonilla, 23 Wn. App. 869 (Div. II, 1979) Nov. '79 LED:04 (allowing officers to listen at an extension phone) is good law, the majority opinion of the State Supreme Court in Corliss does not directly express an opinion on Bonilla. By focusing on "devices," however, and then stating that its opinion goes "no further" than the facts before it, the Court is giving a pretty good hint that it believes one-party consent extension phone eavesdropping is unlawful.

In his dissent, Justice Utter suggests that the majority has expressly declared that it is unlawful under the statute to listen in at an extension phone. While his suggestion may be a stretch, our reluctant view is against such use of extension phones. Check with your legal advisor or prosecutor.

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

SEARCH OF PANTS BEFORE GIVING THEM TO NAKED BEDROOM OCCUPANT COVERED BY SEARCH WARRANT -- In State v. Hill, 123 Wn.2d 641 (1994) the State Supreme Court reverses a Court of Appeals decision (see State v. Lee, 68 Wn. App. 253 (Div. I, 1992) and upholds a search of a pair of pants by an officer executing a narcotics search warrant. The facts in the case are described by the Supreme Court as follows:

> Seattle police officers obtained a search warrant authorizing the search of a house for narcotics and related paraphernalia. No individuals were named in the warrant. Upon executing the warrant, the officers found defendant, Robert James Hill, in the bedroom, along with a scantily clad woman who was sitting on the bed. After questioning, police determined that the woman occupied the home, while defendant did not. When Officer Martin entered the bedroom, defendant was standing naked at the foot of the bed, already handcuffed. The officer sought to take defendant into the living room, which had been searched and was considered clean of weapons and contraband. According to an undisputed finding of fact, defendant asked the officer for his sweatpants. Officer Martin testified that the sweatpants were lying on the floor within 6 feet of the defendant. Before helping the defendant clothe himself, Officer Martin first patted down the exterior of the pants. He testified that in doing so, he did not feel anything which indicated a weapon. He then proceeded to search the pockets for weapons, identification, and

> contraband, utilizing a "special technique" in which he reached his hand halfway into a pocket, then slowly pulled the pocket inside out. He discovered small crumbs of rock cocaine in the pockets. This evidence was the basis of the conviction on the one count being appealed here.

Deferring to the trial court judge's findings of fact to a much greater extent than had the Court of Appeals, the Supreme Court concludes that the sweatpants of the bedroom occupant were covered by the warrant. The Supreme Court explains its ruling in part as follows:

> In this case, despite conflicting testimony, the trial court set out as an undisputed fact that "[a]lthough there was some evidence that the sweatpants were defendant's, it is not clear that this was obvious to the officer before he searched the pants; the pants were on the floor near the door and not obviously associated with the defendant."
>
> We are in accord with the Court of Appeals that Fourth Amendment protections extend to "readily recognizable personal effects . . . which an individual has under his control and seeks to preserve as private." Nevertheless, here it is undisputed that the pants were not clearly associated with the individual, and there is no evidence in the record that he sought to preserve the pants as private. Thus, defendant's sweatpants are not constitutionally protected from a search under a premises warrant.

Result: King County Superior Court conviction for possession of a controlled substance affirmed.

LED EDITOR'S NOTE: The most significant impact of the Hill opinion is that the Court overrules several earlier decisions which had held that an appellate court may independently evaluate the evidence in reviewing a trial court's suppression hearing findings. Hill establishes that the appellate court must defer to the trial court's findings if they are supported by substantial evidence.

On the other hand, the Hill decision's impact on the substantive law regarding searching personal effects for contraband during search warrant execution is not so clear. If the evidence had been clear that Hill was a mere casual visitor and had expressly stated to the officer "those are my pants," then the law might allow only a safety pat of the pants.

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1994 WASHINGTON LEGISLATIVE ENACTMENTS - PART I

LED EDITOR'S INTRODUCTORY NOTE: This is the first part of what we expect to be a three- part digest of 1994 state legislative enactments of interest to Washington law enforcement officers and their agencies. Where new sections are created in the legislation, the State Code Reviser will assign an appropriate section number. That process should be completed by fall, 1994.

BEWARE: As always, any opinions, express or implied, are the personal views of the LED Editor alone. A formal Attorney General's Opinion (AGO) can be obtained only on a formal written request to Attorney General Christine Gregoire, by a legislator, an elected prosecutor, or one of certain state government officers. If a formal AGO is issued

regarding the proper interpretation of the firearms statute, we will send copies of the opinion to all chiefs and sheriffs immediately.

SEX CRIMES INVOLVING HUMAN REMAINS

CHAPTER 53 (SSSB 5800)

Effective Date: June 9, 1994

Adds a new section to chapter 9A.44 RCW, reading as follows:

> (1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.
> (2) As used in this section:
> (a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.
> (b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person.

DISCLOSING OFFENDER HIV STATUS TO VICTIMS

CHAPTER 72 (SHB 2151)

Effective Date: June 9, 1994

Amends RCW 70.24.105, which, among other things, requires that in some circumstances, victims of sex offenses learn the results of HIV testing of the offender. The amendment adds a new subsection providing:

> (7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing.

CHILD PASSENGER RESTRAINT SYSTEMS

CHAPTER 100 (SHB 2414)

Effective Date: June 9, 1994

Amends RCW 46.61.687 relating to child passenger restraint systems by raising the ages covered. Under subsection (1)(a), children less than three years of age (previously the subsection addressed only children less than two) must be in child safety seats. Under subsection (1)(b),

children less than ten years of age but at least three years of age (previously the subsection addressed only children between two and six) must be in either a child safety seat or a seat belt. Also adds exemptions to the statute in a new subsection (4) as follows:

> (4) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, and (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals.

GAMBLING

CHAPTER 120 (HB 2382)

Effective Date: June 9, 1994

Amends definition of "commercial stimulant" at RCW 9.46.0217 by striking words "incidental," "incidental to" and "primary". Also amends the definition of "social card game" at RCW 9.46.0281 by raising from "two" to "three" the dollar amount which may be charged per half hour of play.

CLEANUP RE: RESIDENTIAL BURGLARY

CHAPTER 121 (HB 2392)

Effective Date: June 9, 1994

Amends RCW 9.41.010 (firearms law) to add "residential burglary" as a "crime of violence." Also amends RCW 9A.46.060 (criminal harassment law), RCW 10.95.020 (death penalty law), RCW 10.99.020 (domestic violence law) to insert references to "residential burglary."

MOTOR VEHICLE FORFEITURE FOR TWO DWI'S IN FIVE YEARS

CHAPTER 139 (SSSB 5341)

Effective Date: June 9, 1994

Adds a new section to chapter 46.61 RCW to authorize forfeiture of the motor vehicle of a person who commits a subsequent DWI within five years of the date of conviction for a previous DWI.

Also amends RCW 46.12.270 to establish that one "who transfers, sells, or encumbers an interest in a vehicle in violation of "[forfeiture provisions of chapter 139] with actual notice of the prohibition" is guilty of a misdemeanor. **LED EDITOR'S NOTE: We will provide more information about DWI MV forfeiture in a future LED.**

RECKLESS ENDANGERMENT OF HIGHWAY WORKERS

CHAPTER 141 (ESSB 5995)

Effective Date: March 28, 1994

Adds a new section to chapter 46.61 RCW, reading as follows:

> (1) The secretary of transportation shall adopt standards and specifications for the use of traffic control devices in roadway construction zones on state highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway.
> (2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.
> (3) A person found to have committed any infraction relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.
> (4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.
> (5) The department shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers.

CUSTODIAL INTERFERENCE

CHAPTER 162 (HB 2333)

Effective Date: June 9, 1994

Amends RCW 9A.40.060 to add a new subsection (2) establishing a new alternative version of "custodial interference," as follows:

> (2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and
> (a) Intends to hold the child permanently or for a protracted period; or
> (b) Exposes the child to a substantial risk of illness or physical injury; or
> (c) Causes the child to be removed from the state or usual residence.

Also adds the phrase "parenting plan" to subsection (3) of RCW 9A.40.060.

ALIENS CARRYING FIREARMS

CHAPTER 190 (ESB 6057)

Effective Date: June 9, 1994

Overhauls provisions of RCW 9.41.170 relating to licensing (by DOL) of aliens to carry firearms. The new provisions make it a Class C felony for an alien to carry or possess a firearm without

obtaining a special license from DOL. DOL must check criminal history with either: (a) the foreign country's consul or, in some circumstances, (b) the appropriate Washington law enforcement agency based on the alien's current residence. The amendment does not change existing provisions in section 170 allowing reciprocity for Canadian hunters.

Also amends RCW 9.41.070 by striking provisions in subsection (5) relating to inquiries as to citizenship status of a person applying for a concealed pistol license. Note, however, that such inquiries can and should be made based on Chapter 7, Laws of 1994, 1st Special Session, digested in part at 16-20 below.

Court note: Currently pending in the State Supreme Court is a case challenging on equal protection grounds the special licensing requirement for aliens. See State v. Hernandez-Mercado, No. 60220-4, oral argument to be heard on 6/22/94. A decision before fall is unlikely. For now, the law is enforceable.

OBSTRUCTING A LAW ENFORCEMENT OFFICER

CHAPTER 196 (SSB 6138)

Effective Date: June 9, 1994

Amends the obstructing statute, RCW 9A.76.020, by striking all existing language and replacing it with the following:

> (1) A person is guilty of obstructing a law enforcement officer if the person:
> (a) Willfully makes a false or misleading statement to a law enforcement officer who has detained the person during the course of a lawful investigation or lawful arrest; or
> (b) Willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.
> (2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.
> (3) Obstructing a law enforcement officer is a gross misdemeanor.

GAMBLING, LOTTERY

CHAPTER 218 (SSHB 2228)

Effective Date: April 1, 1994

Section 1 "recognizes "that slot machines, video pull-tabs, video poker, and other electronic games of chance have been considered to be gambling devices before the effective date of this act." Section 2 amends RCW 9.46.010 to state that "[t]he public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control."

Section 3 amends RCW 67.70.010 to define "on-line game", among other things. Section 4

amends RCW 67.70.040(1)(f) to clarify that "[a]pproval of the legislature is required before conducting any on-line game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours."

Section 7 adds a new section to chapter 9.46 establishing forfeiture authority modeled on the drug forfeiture laws in RCW 69.50.505, covering personal property and real property with a specified nexus to illegal gambling activity. Also repeals RCW 9.46.230, the former gambling act forfeiture provision.

Section 8 amends RCW 9.46.0241 to clarify that the definition of "gambling device" includes "slot machines, video pull-tabs, video poker, and other electronic games of chance . . .."

Section 9 adds a new section to chapter 9.46 RCW to make it a felony if a person not properly licensed "knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise. . .."

Section 10 adds a new section to chapter 9.46 RCW to make it a gross misdemeanor if a person not acting pursuant to other statutory authority "knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise. . ." and clarifying that "[i]n the enforcement of this section direct possession of any such a gambling record is presumed to be knowing possession thereof."

Section 11 amends RCW 9.46.220 and section 12 amends RCW 9.46.222 by changing the references in each statute from "calendar month" to "thirty-day period." Section 15 amends RCW 9.46.235 to declare: (A) that section 7 of this act -- the new forfeiture provision -- and (B) that section 9 of this act -- the prohibition on possession of gambling devices -- "do not apply to gambling devices on board a passenger cruise ship which has been registered and bonded with the federal maritime commission, if the gambling devices [on board the ship] are not operated for gambling purposes within the state."

ANIMAL CRUELTY

CHAPTER 261 (ESHB 1652)

Effective Date: June 9, 1994

Section 1 states that the legislative purpose of this enactment overhauling the laws on animal cruelty is as follows:

> The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level.

Section 2 creates a new section in chapter 16.52 RCW establishing definitions, including that of "animal" as "any nonhuman mammal, bird, reptile or amphibian."

Section 3 adds a new section to chapter 16.52 to establish the method by which "animal control officers" can issue citations, cause law enforcement officers to make arrests, and prepare affidavits for search warrants (to be executed along with law enforcement officers).

Section 6 amends RCW 16.52.085 (removal of animals, etc.) and section 7 amends RCW 16.52.095 (re: cutting of parts of ears of certain specified animals).

Sections 8 and 9 establish new sections in chapter 16.52 RCW, as follows:

FIRST DEGREE ANIMAL CRUELTY -- SEC. 8

(1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) Animal cruelty in the first degree is a Class C felony.

SECOND DEGREE ANIMAL CRUELTY -- SEC. 9

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.
(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:
(a) Fails to provide the animal with necessary food, water, shelter, rest, sanitation, ventilation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; or
(b) Abandons the animal.
(3) Animal cruelty in the second degree is a misdemeanor.
(4) In any prosecution of animal cruelty in the second degree, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.

Other sections of chapter 16.52 RCW which are amended are RCW 16.52.100, 16.42.117, 16.52.180, 16.52.185, 16.52.190, 16.52.200, and 16.52.308. Sections which are repealed in chapter 16.52 include .010, .030, .040, 050, 055, 060, 065, .070, .113, .120, .130, .140, and .160.

Section 17 amends RCW 9A.48.080 (malicious mischief in the second degree) by striking the language in subsection (1)(c) relating to certain acts of animal cruelty.

CORRECTING CERTAIN TITLE 9A AND OTHER CRIMINAL LAW PROVISIONS

CHAPTER 271 (SSB 6007)

Effective Date: June 9, 1994

PART 1 (LEGISLATIVE INTENT)

Explains that changes made in the act are merely "technical corrections" ". . . to give full expression of original intent of the legislature."

SECTION 2 (ATTEMPT)

Amends RCW 9A.28.020 to make attempted Murder 2 a Class A felony.

PART 3 (WITNESS BRIBING, TAMPERING, INTIMIDATING)

Amends RCW's 9A.72.090 (bribing a witness) 9A.72.100 (bribe receiving by a witness) 9A.72.110 (intimidating a witness) and 9A.72.120 (tampering with a witness) to address pre-charge conduct. The amendments clarify that those statutes make it a crime to do things otherwise covered by those statutes to obtain the result that a person not report information "relevant to a criminal investigation or the abuse or neglect of a minor child." These changes make clear that a person who commits "Crime A" and then threatens, or engages in tampering or bribing conduct, with respect to possible witnesses as to "Crime A," before that crime is charged, but while it is being investigated, may be charged with these 9A.72 crimes, assuming the required mental state.

PART III (SEXUAL MOLESTATION)

Amends RCW 9A.44.010(2)'s definition of "sexual contact" to encompass acts gratifying sexual desire of "a third party." Also amends RCW's 9A.44.083 (child molestation 1), 9A.44.086 (child molestation 2), 9A.44.089 (child molestation 3), 9A.44.093 (sexual misconduct 1), and 9A.44.096 (sexual misconduct 2) to cover situations where a perpetrator causes a third person "under the age of eighteen" to have "sexual contact" or "sexual intercourse" with a person in the age group protected under the pertinent statute.

PART IV (DNA IDENTIFICATION)

Amends RCW 43.43.754 to make clear that juveniles adjudicated guilty of sex offenses or violent offenses shall be subject to a blood draw for DNA identification purposes.

PART V (TOXICOLOGIST AS WITNESS)

Amends RCW 43.43.680 to provide for admission of a certified copy of a state toxicologist's report relating to BAC verifier datamaster as evidence of the results of findings and certification; a defendant may subpoena the appropriate toxicologist if the defendant gives thirty days notice of the intent to do so.

PART VI (RESTITUTION)

Amends RCW 9.94A.140 and 9.94A.142 to extend the period of the Court's jurisdiction over restitution requirements to ten years "following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer."

PART VII (BAIL JUMPING)

Repeals RCW 10.19.130 (failure to appear) to eliminate overlap with bail jumping statute at RCW 9A.76.170. The latter statute remains intact.

PART VIII (STALKING)

Amends subsection (1) of RCW 9A.46.110 to make clear that one who either "harasses" or "repeatedly follows" another person causing reasonable fear in that person is subject to prosecution. Subsections (5) and (6) of the same section are amended as follows (shown in bill-draft form to illustrate changes):

> (5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a ((~~no contact order or no harassment~~)) protective order; (b) the ((~~person~~)) stalking violates ((~~a court~~)) any protective order ((~~issued pursuant to RCW 9A.46.040~~)) protecting the person being stalked; ((~~or~~)) (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (d) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.125, while stalking the person; (e) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (f) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.
>
> (6) As used in this section:
>
> (a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
>
> (b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.
>
> (c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.
>
> (d) "Repeatedly" means on two or more separate occasions.

[Underlines indicate new language; strikeouts indicate deletions. LED Ed.]

Part VIII also amends RCW 9A.46.060's definition of (criminal) "harassment" to include "Violation of a temporary or permanent protective order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW."

PART IX (DISCHARGE OF OFFENDERS)

Amends RCW 9.94A.220 allowing early discharge from community supervision of certain non-violent offenders.

PART X (SITING OF CORRECTIONAL FACILITIES)

Establishes notice requirements for DOC in the siting of new correctional facilities.

1994 OMNIBUS DRUNK DRIVING ACT

CHAPTER 275 (SSB 6047)

Effective Date: July 1, 1994

PART I (DWI Penalties)

Sections 1 through 7 add new sections to Title 46 RCW and amend existing sections to create increased penalties for DWI for those who commit the offense: (1) with alcohol concentration of more than .15; (2) when in a probationary, suspended, or revoked status; and/or (3) with a prior DWI conviction in the preceding five years.

PART II (Probationary Licenses)

Section 8 adds a new section to chapter 46.61 RCW to require that DOL issue a "probationary license" to a person convicted of DWI or physical control. The person will be in such status for a 5-year period, and license renewals will be issued accordingly. The probationary license will be marked in a way that law enforcement personnel can determine (a) the driver's status and (b) the period the person will be in that status.

PART III (Assessment and Treatment

Section 9 adds a new section to chapter 46.61 RCW addressing alcohol assessment and treatment of certain categories of persons convicted of DWI or physical control.

PART IV (Administrative Revocation)

Section 10 adds a new section to chapter 46.20 RCW making it unlawful for a person under age 21 to drive, operate, or be in physical control of vehicle where the person has an alcohol concentration of .02 or above; and providing for administrative revocation of the youthful driver's license if an officer has reasonable grounds the driver was driving or in control of a vehicle "while having alcohol in his or her system." Section 11 imposes duties to cooperate on persons under age 21 signaled to stop by a law enforcement officer, but does not establish a clear standard for the officer to make that stop (presumably, a constitutional "reasonable suspicion" minimum must be read into the statute). Section 12 establishes an administrative revocation scheme for persons

arrested for DWI or physical control who have BAC readings of .10 or higher. **Note: We'll have more on this part in a future LED.**

PART V (Implied Consent)

Section 13 amends RCW 46.20.308 to require that persons seeking a 242 hearing pay a $100 fee.

PART VI (Driving Records)

Sections 14, 15, and 16 amend the provisions of RCW 46.01.260, 46.52.100, 46.52.130 relating to driving records.

PART VII (Deferred Prosecution)

Sections in this part amend RCW 10.05.060 to incorporate "probationary license" references, and also amend RCW 10.05.090 and 10.05.120.

PART VIII (Vehicular Homicide)

Section 20 amends RCW 9.94A.320 (sentencing) to move "vehicular homicide by being under the influence . . ." from seriousness level VIII up to seriousness level VII.

PART IX (Interlock)

Sections in this part amend various sections in chapter 46.20 RCW to allow "ignition interlocks" to be "other biological or technical device(s)", a phrase which is defined as:

> any device meeting the standards of the national highway traffic safety administration or the state commission on equipment, designed to prevent the operation of a motor vehicle by a person who is impaired by alcohol or drugs.

PART X (Miscellaneous)

Sections in this part clean up language in RCW 46.61.506, 46.20.311, 46.04.580 and 46.20.391. Also, section 32 amends RCW 46.55.113 in the following manner (set out in bill-draft form to show changes):

> Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 [DWI] or 46.61.504 [physical control], the arresting officer may take custody of the vehicle and provide for its prompt removal to a place of safety. In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:
>
> (1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;
> (2) Whenever a police officer finds a vehicle unattended upon a highway where the

vehicle constitutes an obstruction to traffic or jeopardizes public safety;
(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable((~~,or too intoxicated, to decide~~)) of deciding upon steps to be taken to protect his or her property;
(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer ((~~, and the driver, because of intoxication or otherwise, is mentally incapable of deciding upon steps to be taken to safeguard his or her property~~));
(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;
(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

[Underlines indicate new language; lineouts and parentheses indicate deletions.]

LED EDITOR'S COMMENT: We believe that these changes do not change the constitutional requirement that police consider reasonable alternatives to impoundment before impounding a person's vehicle. In State v. Reynoso, 41 Wn. App. 113 (Div. III, 1985) Oct. '85 LED:06, Division III of the Washington Court of Appeals held that constitutional protections against unreasonable searches and seizures mandate that RCW 46.20.435 (authorizing vehicle impoundment for driving suspended or revoked) be read as requiring that police consider reasonable alternatives to impoundment before impounding a vehicle driven by a suspended or revoked driver. We think that the Legislature could establish per se impoundment crimes expressly overriding the "reasonable alternatives" rule of Reynoso, but, because the Legislature has not expressly done so in either RCW 46.20.435, or in the 1994 amendments to RCW 46.55.113 (set forth above), police must continue to consider "reasonable alternatives" to impoundment unless a vehicle is being seized as evidence or for forfeiture purposes.

FIREARMS ACT OVERHAUL

CHAPTER 7, 1st Special Session (ESSHB 2319)

Effective Date: July 1, 1994

LED EDITOR'S NOTE: This is the first part of at least a two-part piece on the 1994 overhaul of chapter 9.41 RCW. Tim Schellberg, legislative liaison with Washington Association of Sheriffs and Police Chiefs (WASPC), and Steve Perry, firearms law expert with Edmonds Police Department, are working on an article on this 1994 act; their work product, including application form revisions, should be ready by the May 23-27 WASPC conference. Their work product will also be excerpted in the July LED. Perry and others are also working on firearms law training to be presented in June in several locations in the State.

Meanwhile, we'll give our views on four related items this month. First, we'll list the crimes which make possession of any firearm unlawful under the newly amended state law; conviction of these crimes also disqualify a person from obtaining a concealed pistol license (CPL). Second, we'll list the additional crimes which disqualify one from obtaining a CPL (as of 7/01/94). Third, we'll note that "juvenile adjudications" are no longer disqualifiers under chapter 9.41 as of 7/01/94. Fourth, we'll address the complex issue of restoration of rights. We had intended also to address how state law relates to the Federal Brady Bill, but at LED deadline, we realized that we "just didn't get it." Hence, we will work on that thorny issue and address it next month. We will also touch on retroactivity questions, among others, next month.

I. PROHIBITED POSSESSION

RCW 9.41.040 makes it a Class C felony for a person to own or have in his or her possession a firearm having previously been convicted of:

- a **"serious offense"** defined in RCW 9.41.010
- a **"domestic violence offense"** as defined in RCW 10.99.020(2)
- a **"harassment offense"** as defined in RCW 9A.46.060
- a felony in which a firearm was used or displayed **[Note: because reckless endangerment 1 -- drive-by shooting -- necessarily involves a firearm, it may be a per se disqualifier]**
- felony violation of controlled substances act or equivalent statute elsewhere
- three DWI's (MV or vessel) in five-year period.

Possession or ownership is also unlawful if the person is under age 18, but there are numerous exceptions (to be addressed next month) where a person under 18 may possess or own a firearm.

RCW 9.41.010(12) defines "serious offense" as follows:

> "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:
> (a) Any **crime of violence**;
> (b) Child molestation in the second degree;
> (c) Controlled substance homicide;
> (d) Incest when committed against a child under age fourteen;
> (e) Indecent liberties;
> (f) Leading organized crime;
> (g) Promoting prostitution in the first degree;
> (h) Rape in the third degree;
> (i) Sexual exploitation;
> (j) Vehicular assault;
> (k) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner.
> (l) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(m) Any other felony with a deadly weapon verdict under RCW 9.94A.125; or
(n) Any felony offense in effect at any time prior to the effective date of this section that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

RCW 9.41.010(11) defines "crime of violence" as follows:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a **class A felony** or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree,kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, and robbery in the second degree**[LED EDITOR'S NOTE: chapter 121, Laws of 1994, digested above at 8, added "residential burglary" to the list]**;
(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and
(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

The Class A felonies are as follows:

Aggravated Murder
Murder and Attempted Murder 1, 2
Homicide by Abuse
Assault 1
Assault of Child 1
Kidnap 1
Rape 1, 2
Rape of Child 1, 2
Child Molesting 1
Arson 1
Burglary 1
Robbery 1

RCW 10.99.020(2) defines "domestic violence" offense as follows (emphasis added):

"Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:
(a) Assault in the first degree (RCW 9A.36.011);
(b) Assault in the second degree (RCW 9A.36.021);
(c) Assault in the third degree (RCW 9A.36.031);
(d) Assault in the fourth degree (RCW 9A.36.041);
(e) Reckless endangerment in the first degree (RCW 9A.36.045);
(f) Reckless endangerment in the second degree (RCW 9A.36.050);

(g) Coercion (RCW 9A.36.070);
(h) Burglary in the first degree (RCW 9A.52.020)**[Residential burglary has been added to the list by chapter 121, Laws of 1994. LED Ed.]**;
(i) Burglary in the second degree (RCW 9A.52.030);
(j) Criminal trespass in the first degree (RCW 9A.52.070);
(k) Criminal trespass in the second degree (RCW 9A.52.080);
(l) Malicious mischief in the first degree (RCW 9A.48.070);
(m) Malicious mischief in the second degree (RCW 9A.48.080);
(n) Malicious mischief in the third degree (RCW 9A.48.090);
(o) Kidnapping in the first degree (RCW 9A.40.020);
(p) Kidnapping in the second degree (RCW 9A.40.030);
(q) Unlawful imprisonment (RCW 9A.40.040);
(r) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);
(s) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);
(t) Rape in the first degree (RCW 9A.44.040); and
(u) Rape in the second degree (RCW 9A.44.050).

RCW 9A.46.060 defines "harassment" as follows **[LED EDITOR'S NOTE: Unlike the "Domestic Violence" definition above, the "harassment" definition includes all types of victims for all listed crimes.]**:

Crimes included in harassment. As used in this chapter, "harassment" may include but is not limited to any of the following crimes:
(1) Harassment (RCW 9A.46.020);
(2) Malicious harassment (RCW 9A.36.080);
(3) Telephone harassment (RCW 9.61.230);
(4) Assault in the first degree (RCW 9A.36.011);
(5) Assault of a child in the first degree (RCW 9A.36.120);
(6) Assault in the second degree (RCW 9A.36.021);
(7) Assault of a child in the second degree (RCW 9A.36.130);
(8) Assault in the fourth degree (RCW 9A.36.041);
(9) Reckless endangerment in the second degree (RCW 9A.36.050);
(10) Extortion in the first degree (RCW 9A.56.120);
(11) Extortion in the second degree (RCW 9A.56.130);
(12) Coercion (RCW 9A.36.070);
(13) Burglary in the first degree (RCW 9A.52.020)**[Residential burglary has been added to the list by chapter 121, Laws of 1994. LED Ed.]**;
(14) Burglary in the second degree (RCW 9A.52.030);
(15) Criminal trespass in the first degree (RCW 9A.52.070);
(16) Criminal trespass in the second degree (RCW 9A.52.080);
(17) Malicious mischief in the first degree (RCW 9A.48.070);
(18) Malicious mischief in the second degree (RCW 9A.48.080);
(19) Malicious mischief in the third degree (RCW 9A.48.090);
(20) Kidnapping in the first degree (RCW 9A.40.020);
(21) Kidnapping in the second degree (RCW 9A.40.030);
(22) Unlawful imprisonment (RCW 9A.40.040);
(23) Rape in the first degree (RCW 9A.44.040);

(24) Rape in the second degree (RCW 9A.44.050);
(25) Rape in the third degree (RCW 9.44.060);
(26) Indecent liberties (RCW 9A.44.100);
(27) Rape of a child in the first degree (RCW 9A.44.073);
(28) Rape of a child in the second degree (RCW 9A.44.076);
(29) Rape of a child in the third degree (RCW 9A.44.079);
(30) Child molestation in the first degree (RCW 9A.44.083);
(31) Child molestation in the second degree (RCW 9A.44.086);
(32) Child molestation in the third degree (RCW 9A.44.089); and
(33) Stalking (RCW 9A.46.110).
[Chapter 271, Laws of 1994, adds the following "harassment" offenses at (34): "Violation of a temporary or permanent protection order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.]

II. ADDITIONAL DISQUALIFIER CRIMES FOR CPL ISSUANCE

RCW 9.41.070 makes a person ineligible for a concealed pistol license if he or she (a) is prohibited from possessing a firearm under RCW 9.41.040 (see the crimes listed on the preceding three pages); (b) is under 21; (c) is currently under a court order relating to firearms for criminal or civil harassment, domestic violence, or a dissolution action; (d) is currently on bond or PR relating to a "serious offense"; (e) currently has an outstanding warrant for any crime; (f) has been ordered to forfeit a firearm relating to an alcohol or drug-related incident within the past year; or (g) has been convicted at any time in the past of a **"crime against a child or other person"** listed in RCW 43.43.830(5).

"Crime against a child or other person" under RCW 43.43.830(5) is defined as follows:

> "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second or third degree assault; first, second or third degree assault of a child; first, second or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; or any of these crimes as they may be renamed in the future.

Convictions for any of the crimes named on the above list in RCW 43.43.830(5), but not listed on the preceding three pages as possession disqualifiers, do not disqualify one for possession of a firearm. Like the list under the "harassment" statute, and unlike the "domestic violence" list, the list of "crimes against children or other persons" is not restricted to a certain category of victim, except as provided under the elements of the particular crime. Accordingly, if a person has been

convicted of "prostitution," for example, that person may not obtain a CPL because that crime, per se, is a crime against a person under 43.43.830(5).

III. JUVENILE ADJUDICATIONS NO LONGER DISQUALIFY

Language regarding "juvenile adjudications" has been stricken from chapter 9.41 such that past juvenile adjudications of guilt of even what would be "crimes of violence" if committed by an adult will not disqualify a person, now 21 or older, from possessing a firearm or obtaining a CPL.

IV. RESTORATION OF RIGHTS

Subsection (4) of RCW 9.41.040 has been slightly modified to provide as follows:

> Notwithstanding subsection (1) of this section, a person convicted of an offense other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction.

This subsection allows a person to regain the right to possess a firearm and obtain a CPL in the very limited circumstance of probation and dismissal for certain crimes specifically under RCW 9.95.200 and 9.95.240.

Subsection (3)'s language relating to restoration of rights now reads as follows:

> . . . A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

A new subsection (iii) in RCW 9.41.070(1)(g) now provides:

> (iii) No person convicted of a serious offense as defined in 9.41.010 may have his or her right to possess firearms restored, unless the person has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c), or RCW 9.41.040(3) or (4) applies.

And previously existing restoration language in RCW 9.41.070 has been renumbered (under "(3)" and slightly modified to read as follows:

> (3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

Note that the 1994 amendments to chapter 9.41 RCW do not change the pertinent language addressed in Attorney General Opinions in 1988 and 1993 answering questions relating to restoration of rights. In AGO 1988 No. 10, the Attorney General opined, among other things, that a person who is barred from possession of a firearm under RCW 9.41.040 will not have his or her right to possess a firearm restored under any of the following circumstances:

a. the person has received a suspended sentence, the suspended sentence has terminated and the person has had civil rights restored pursuant to RCW 9.92.066;

b. the person has completed parole and has received a certificate of discharge pursuant to RCW 9.96.050;

c. the person has completed sentence and received a certificate of discharge pursuant to RCW 9.94A.220; or

d. the record of the person's conviction has been vacated pursuant to RCW 9.94A.230.

AGO 1988 No. 10 also expressed the view that probation and dismissal under RCW 9.95.240 does not restore rights for the categories of crimes listed in bold in the above-quoted subsection (4) of RCW 9.41.040.

In AGO 1993 No. 10, the Attorney General addressed RCW 9.41.070(2), which provides that one can regain the right to possess a firearm if the person is exempt under 18 U.S.C. § 921(a)(20). This federal statute provides an exemption when an individual's civil rights have been restored, unless the restoration of civil rights expressly provides that the person may not possess a firearm. The Attorney General's view is that the restoration of civil rights upon pardon or final discharge, pursuant to chapter 9.96 RCW, does not meet the exemption in 18 U.S.C. § 921(a)(20) because RCW 9.41.040(3) expressly provides that an individual whose conviction is subject to a pardon, annulment, or equivalent procedure cannot possess a handgun unless there is also a finding of rehabilitation or innocence. The net result of this interpretation is that the exemption under 070 and 18 U.S.C. § 921(a)(20) applies only to convictions from other states where rights have been restored by the laws of those states.

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NEXT MONTH

The July LED will include, among other things, Part 2 of our 1994 legislative update, as well as entries on recent Washington Supreme Court decisions in: (1) State v. Walsh & State v. Osborn, 123 Wn.2d 741 (1994) (upholding convictions for illegal "spotlight" hunting under RCW 77.16.050 where defendants either shot or aimed at styrofoam deer decoys); (2) State v. Ward & John Doe Parolee v. State, 123 Wn.2d 488 (1994)(upholding sex offender registration statute, RCW 9A.44.130-140, against constitutional attack); and (3) State v. Dent, 123 Wn.2d 467 (1994) (affirming a Court of Appeals decision -- see June '93 LED:19 -- and holding that the "substantial step" standard of the "conspiracy" statute, RCW 9A.28.040, is easier to meet than the "substantial step" standard of the "attempt" statute, RCW 9A.28.020); and (4) Soundgarden v. Eikenberry, 123 Wn.2d 750 (1994) (striking down on constitutional due process grounds the "Erotic Music Statute" at RCW 9.68.040 - .090).

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.